THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITON Nos.3247 AND 4390 OF 2003

Dt.07-02-2007

WRIT PETITON No.3247 OF 2003

Between:

Smt.G.Vani Mohan

.... Petitioner

A n d

Government of Andhra Pradesh,
Rep. by its Secretary, Revenue Department,
Secretariat, Hyderabad and 10 others.

.... Respondents

WRIT PETITON No.4390 OF 2003

Between:

Smt.K.Sunitha

.... Petitioner

A n d

Government of Andhra Pradesh,
Rep. by its Secretary, Revenue Department,
Secretariat, Hyderabad and 12 others.

.... Respondents

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION Nos.3247 AND 4390 OF 2003

COMMON ORDER: **(Per Hon'ble Sri Justice M.Venkateswara Reddy)**

W.P.No.3247 of 2003:

The 3rd petitioner in O.A.No.7497 of 1998 on the file of the Andhra Pradesh Administrative Tribunal (for short "the Tribunal") filed this writ petition questioning the dismissal of the said O.A. filed by her and two others, in which they challenged the action of the official respondents in treating the respondents 4 to 9 as Seniors to them by including them (unofficial respondents) in the panels of earlier years. The 11th respondent was added as per orders dated 23.01.2006 made in the implead petition in W.P.M.P.No.3594 of 2005.

W.P.No.4390 of 2003:

W.P.No.4390 of 2003 is filed by a third party with the leave of this Court challenging the same order i.e. the order of the Tribunal made in O.A.No.7497 of 1998 and impugned in the above writ petition No.3247 of 2003. In M.A.No.164 of 2002 in O.A.No.7497 of 1998 on the file of the Tribunal, the petition filed by the petitioner herein to implead her in O.A.No.7497 of 1998 was dismissed by the Tribunal. Hence, this writ petition with leave.

The admitted factual matrix of the case is as under:

The petitioners in both the writ petitions were selected and appointed as Deputy Collectors in

the Revenue Department during the year 1988-89. They joined in the said post in the year 1990 along with other successful candidates. They completed the probation period satisfactorily and their services were regularized. Both of them were also promoted to the next higher category i.e. Special Deputy Collector's post in the year 1997. Both of them were placed in the panel prepared by the Andhra Pradesh Public Service Commission (for short "the Service Commission"). The respondents 4 to 6 i.e., Thippanna, Ramanjaneyulu and Venkateswarlu got qualified for appointment in Group-I posts in the A.P.State Civil Service in the year 1983-84. Group-I consists of several posts like Deputy Collector, Deputy Superintendent of Police, Regional Transport Officer, Deputy Registrar of Co-operative Societies. The post of Deputy Collector is supposed to be a hot cake. The 4th respondent expressed his unwillingness at the time of interview for his appointment to the post of Deputy Registrar of Co-operative Societies and Assistant Director, Survey and Land Records. Therefore, the Service Commission did not communicate the selection and allotment when fall out vacancies were taken up for those posts. Later, he was not considered for the fall out vacancies.

One A.V.Bogeswarudu of the same Batch (1988-89) filed a Civil Appeal No.4041 of 1989 on the file of the Supreme Court of India. In the said appeal, the Supreme Court held that when same candidates did not join, the vacancies remaining unfilled should be

filled up by recommending the candidate next in order of merit out of the same list and not by fresh selection. One Mr.Sudhakar, referred to above, who secured lesser marks than Thippanna and Ramanjaneyulu, the 4th and 5th respondents, was appointed as Regional Transport Officer pursuant to the above said judgment of the Apex Court.

The 4th Respondent approached the Tribunal in O.A.No.30084 of 1990. The said O.A. was disposed of with a direction to the Service Commission to forward his name to the Government with a simultaneous direction to the Government to appoint him as R.T.O. or to any other available post which he is prepared to accept in any S.C. carry forward vacancy in any department, since Mr.Sudhakar, above mentioned, who secured lesser marks was selected as Regional Transport Officer in the fall out vacancies. The 4th respondent then made a representation that he worked as M.R.O. for 16 years and therefore he may be considered to the post of Deputy Collector. In pursuance of the direction given by the Tribunal and on the basis of representation made by him, the Government issued G.O.Ms.No.620, dated 20.11.1995 appointing the 4th respondent as Deputy Collector against the carry forward vacancy reserved for S.C. community for the year 1983-84. Later, his services were regularized with effect from 21.12.1988 and he was assigned last rank in the batch of Deputy Collectors for the year 1983-84.

B.Ramanjaneyulu, the 5th respondent was selected as Assistant Director of Survey and Land Records. He failed to join within the stipulated time. Later he also approached the Tribunal. In R.P.No.24294 of 1989, the Tribunal passed similar orders as passed in the case of 4th respondent Thippanna in his favour also. He made a representation to the Government stating that during 1984-85 he was selected for Group-I services and joined as Deputy Tahasildar and subsequently promoted as Tahasildar in which post he was working and that he may be considered for appointment as Deputy Collector. Therefore, the Government issued G.O.Ms.No.409, Revenue (Services-I) Department, dated 28.05.1996 appointing him as Deputy Collector.

Both the 4th and 5th respondents were appointed as Deputy Collectors against the direct recruitment vacancies reserved for S.C. community by restoring their ranks in the list approved by the Service Commission under Group-I Services for the year 1983-84. The vacancies of Deputy Collectors against which they were appointed were deleted from the future recruitment for S.Cs.

Among the selected candidates of the Group-I posts of 1983-84 batch, one H.Ramulu, a S.T. Candidate and D.Vshala, an O.C. Candidate did not report within time. Therefore, the Service Commission communicated the name of the 6th respondent who was

next in order of merit for appointment as Deputy Collector in the place of H.Ramulu, (S.T. Candidate) and accordingly G.O.Ms.No.883, dated 26.09.1990 was issued in consultation with the Service Commission appointing him as Deputy Collector. He was assigned the last rank in the batch of direct recruits. His services were regularized under G.O.Ms.No.395, dated 06.06.1998.

Thus, Respondent Nos.4 to 6 who were not selected to the post of Deputy Collector initially as per merit list could successfully get that post subsequently.

The Respondents 7 to 9 are promotee Deputy Collectors. They were working as M.R.Os by the date of their promotion as Deputy Collectors. It is stated that the name of R.7 was included in the ad hoc panel of Deputy Collectors for the year 1991-92 in the carry forward vacancy meant for S.Cs. His name was included in the ad hoc panel of Deputy Collectors for the year 1991. On a representation made by him that he shall be included in the regular panel of Deputy Collectors for the year 1988-89 by relaxing one day short fall of his service in the cadre of Tahasildar, the Government relaxed the rule in his favour making him eligible to be included in the panel of Deputy Collectors for the year 1989-90 with the concurrence of the Service Commission. Likewise, the name of R.8 was included in the Deputy Collectors' panel of the year 1989-90 relaxing one day shortfall of his service in the cadre of Tahasildar after obtaining concurrence of the

Service Commission. By the date of O.A. the name of R.9 was being examined for the inclusion in the panel of 1989-90.

O.A.No.7497 of 1998 was disposed of along with O.A.Nos.6084 and 6195 of 1998 by the Division Bench of the Tribunal. Differing opinions were given at by the Division Bench. The learned Acting Vice Chairman had chosen to dismiss the O.A. while the learned Member (Administrative) came to the conclusion that respondents 4 and 5 are not entitled for seniority with reference to the recruitment for Group-I services for the year 1983-84 and they are entitled for seniority only from the date of their appointment. So far as the 6th respondent is concerned, the learned Member held that it does not call for any interference. The learned Member also held that respondents 7 to 9 are not entitled for inclusion of their names in the panel of Deputy Collectors for the year 1989-90. Hence, the matter was referred to the learned Member (Judicial), who concurred with the orders made by the learned Acting Chairman. Consequently, all the three Original Applications were dismissed. Hence, the present writ petitions by the aggrieved petitioners in the O.A. and the person whose implead petition was dismissed by the Tribunal.

The unofficial respondent No.11 got impleaded in the writ petition No.3247 of 2003 subsequently. Her contention is that the petitioner in W.P.No.3247 of 2003 is junior to her in the selection list

and as such any orders passed by this Court may affect her. No counter is filed in the writ petition either by the 11th respondent or any other respondent in both the writ petitions.

It is contended before us, *inter alia*, that the order passed by the Tribunal is unknown to service jurisprudence; that the principle of *audi altram partem* was given a go-bye in fixing the seniority to the respondents above the petitioners; that giving seniority with retrospective effect though the respondents were appointed subsequent to the petitioners' batch is illegal.

The grievance of the writ petitioners is that Respondent Nos.4 to 9 were included in the earlier panels by giving notional seniority and they stole a march over the petitioners in seniority though the appointment of Respondent Nos.4 to 9 was subsequent to that of the petitioners.

Among the unofficial respondents 4 to 9 whose appointments are questioned, respondent Nos.4 and 5 fall into one category, the respondent No.6 exclusively constitutes one category and respondent Nos.7 to 9 constitute yet another category.

We shall take up the issue relating to appointment of respondent No.6, first. He was kept in waiting list as he could not secure requisite marks. In A.V.Bogeswarudu's case, noted above, the Apex Court

held that when some candidates did not join, the vacancies remaining unfilled should be filled up by recommending the candidate next in order of merit out of the same list and not by fresh selection. One H.Ramulu, a S.T. Candidate and one D.Vishala, a O.C. candidate did not report for joining within time and therefore the Service Commission communicated the name of the respondent No.6 for appointment as Deputy Collector in the place of H.Ramulu and therefore, the Government issued G.O.Ms.No.833, dated 26.09.1990 in consultation with the Service Commission appointing the respondent No.6 as Deputy Collector. He was assigned last rank. Thus, he was appointed in a fall out vacancy. The appointment relates back to 1983-84 recruitment. In respect of fixation of seniority as per Rule 33 (b) of the Andhra Pradesh State and Subordinate Services Rules, the roster point against which he was appointed has to be taken into consideration. He was given seniority accordingly.

I n ***STATE OF MAHARASHTRA*** v. ***JAGANNATH ACHYUT KARANDIKAR***[1], the Apex Court held that making an employee to suffer adversely for the default or lapse on the part of the Government itself would be unjust, unreasonable and arbitrary. In ***PILLA SITARAM PATRUDU*** v. ***UNION OF INDIA***[2], where the appointment was delayed due to lapse on the part of the Railway administration and where after his appointment in 1981, the petitioner before the Apex Court passed the requisite test within two years and his

case was not considered for promotion as Executive Engineer, it ruled that he is entitled for appointment and to the ranking in the selection list. In ***SURENDRA NARAIN SINGH AND OTHERS*** v. ***STATE OF BIHAR AND OTHERS***[3], the Apex Court ruled that for delay in forwarding supplementary list, appointees cannot be made to suffer. In another case ***K.MANMADHA RAO*** v . ***GOVERNMENT OF ANDHRA PRADESH AND OTHERS***[4], where the petitioner before the Apex Court who appeared for limited recruitment for the post of Assistant Engineer was declared selected in the year 1978, but he was informed of the selection in the year 1979 only, the Apex Court ruled that he is entitled to seniority higher in rank than those whose services were recognized and Government is justified in revising the earlier proceedings and restoring the seniority of the petitioner.

In respect of the respondent No.6 he was not at fault. The delay had occasioned for other reasons. In the teeth of the ratio of the above cases, it would be far fetched to say that he is not entitled to seniority over the subsequent recruits. Therefore, for the foregoing reasons, the appointment and fixation of seniority of respondent No.6 as fixed have to be upheld.

This brings us to the issue relating to first category i.e. respondents 4 and 5. Respondent No.4 expressed his unwillingness at the time of interview for appointment to the post of Deputy Registrar of Co-

operative Societies and Assistant Director, Survey and Land Records. Therefore, the Service Commission did not communicate the selection and allotment when fall out vacancies were taken up. He approached the Tribunal in O.A.No.30084 of 1990. Since one Sudhakar who secured less marks than him was appointed as Deputy Collector, the Tribunal directed the Government to appoint him as Deputy Collector or to any other available post, which he is prepared to accept in any S.C carry forward vacancy in any department. In pursuance of the said direction and on a representation made by him that he served as M.R.O for 16 years, he was appointed as Deputy Collector. As already noted, the 5th respondent failed to join in the stipulated time and in R.P.No.24294 of 1989 the Tribunal passed similar orders as that passed in the case of the 4th respondent and taking into consideration his representation that he was working as Tahasildhar, he too was appointed as Deputy Collector.

It may be noted that there is no direction by the Tribunal that they shall be appointed as Deputy Collectors. The fact that they were already working in the Revenue Department appears to have weighed with the Government in appointing them as Deputy Collectors.

The question here is wither there were fall out vacancies or carry forward vacancies reserved to S.C. candidates. The learned Member (Administrative)

gave a finding on this question while the learned Acting Chairman and the learned Member (Judicial) did not.

The learned Member (Administrative) observed as under:

> "The A.P. Public Service Commission notified the vacancies reserved to be filled in by direct recruitment to various categories of posts in Group-I Services keeping in view the availability of vacancies. According to the counter filed by A.P.P.S.C., for the recruitment year relating to 1983-84 3 SC vacancies were notified. There is no indication in the counter filed by APPSC that there were any carry forward Dy. Collectors vacancies meant to be filled in by SC candidates in the recruitment done during the year 1983-84. The counter filed by the APPSC also goes to show that all the 3 vacancies were filled up by 3 candidates in order of merit and all of them have jointed service. Further, there were also no fall out vacancy in the SC category in the recruitment done during 1983-84. The candidates who were selected as Deputy Collectors have secured higher marks than the respondents 4 and 5. Therefore, the Respondents 4 and 5 cannot have any grievance if they were not appointed as Deputy Collectors in the selections relating to 1983-84. Their grievance can only be in respect of appointment to other categories of posts namely RTO/other posts included in Group-I service in which persons who got lesser marks than them were appointed ignoring their claims. Any appointments against vacancies notified in 1983-84 for direct recruitment could be made in respect of vacancies notified or that arose due to non-joining of selected candidates in the recruitment relating to 1983-84. As there were no vacancies available and as all available vacancies meant for SCs were filled up by

> candidates who obtained higher marks than Respondents 4 and 5 and as there are no fall out vacancies, the applicants cannot be legitimately appointed as Deputy Collectors in the recruitment relating to the year 1983-84. However, in the counter filed by the Government it is stated that Respondents 4 and 5 were appointed against carry forward vacancies. It is not clear from the counter whether carry forward vacancies were available during 1983-84 which could be filled up by the party respondents 4 and 5 or carry forward vacancies were available at the time of the appointment of Respondents 4 and 5 in 1995-96. In the counter filed by APPSC which is the recruiting agency there is no averment that there were carry forward vacancies available for SCs during the recruitment year 1983-84."

Thus, a finding is given by the learned Member (Administrative) that there were neither carry forward vacancies nor fall out vacancies.

The fact that all the three vacancies reserved for S.C. candidates were filled up was noted in the judgment delivered by the learned Acting Chairman also.

With regard to carry forward vacancies or fall out vacancies, the learned Acting Chairman observed as under:

> "The A.P. Public Service Commissioner made it clear that both Party Respondents 4 and 5 were not selected as carry forward vacancies much less the carry forward vacancies that were carry forward beyond 3 years. Thus, the A.P. Public Service Commissioner amply made it clear that

Party Respondents 4 and 5 were selected in pursuance of the directions of this Tribunal in the said two O.As. They made it clear that both of them were selected in pursuance of Group-I Services 1983-84 batch. He got eligibility for selection for the post of Deputy Registrar of Cooperative Societies and Asst. Director of Survey and Land Records, but he did not join. Later, he was not considered for selection against fall our vacancies. Based on the directions of this Tribunal in O.A.No.30084 of 1990 the A.P. Public Service Commission communicated his case to the Government vide their letter dated 30-01-1995 for appointment to any equivalent post of Regional Transport Officer in Group-I Services. As he was already working as Mandal Revenue Officer, at that point of time, he represented to Government with a request to appoint him as Deputy Collector. The Government in their counter clearly indicated that after careful examination of his case, Government issued orders vide G.O.Ms.No.620, Revenue (Ser.I) Department, dated
20-11-1995 appointing him as Deputy Collector in A.P. Civil Services by direct recruitment against the carry forward vacancies reserved for S.C. community by restoring his rank in the list of approved by the A.P. Public Service Commission, under Group-I Services of direct recruitment for the year 1983-84, with the stipulation that his inter se seniority in a batch of Deputy Collectors for the year 1983-84 will be communicated at the appropriate time in consultation with the A.P. Public Service Commission. His date of officiation is
27-11-1995. Thus, the Government made it clear that Sri P.Thippana was appointed in

carry forward vacancy."

From the above excerpt it appears that the learned Acting Chairman gained an impression that the 4th respondent was appointed in a carry forward vacancy, without going into the details. At one stage, the learned Acting Chairman observes:

> "The fact remains that the judgments rendered by this Tribunal in the aforesaid O.A. and R.P. have become final and no alternative was left over to the official respondents including A.P. Public Service Commission except to obey the directions contained therein."

At another place, the learned Acting Chairman observes:

> "Of course, there is some inconsistency with regard to the stand taken by the A.P.P.S.C and the Government. The Government took the view that they were appointed in carry forward vacancies. The A.P.P.S.C on the other hand did state that they were appointed in future vacancies. Herein, we want to make it clear that the Government is the competent authority to say in which vacancies the party respondents are accommodated. At this length of time such controversy is immaterial. The official respondents are bound to obey the directions given by this Tribunal. Accordingly, the party respondents were accommodated.
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> xxxxxx
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> xxxxxx
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> Herein the Government did not appoint the

> party Respondents 4 to 6 on its own accord. A mandate was given by this Tribunal to appoint party Respondent Nos.4 and 5. Party Respondent No.6 was appointed as per the ratio held in A.V.Bogeswarudu's case. If such appointments were not made the official respondents could have been hauled up for contempt. In those circumstances, the party Respondent Nos.4 to 6 were appointed, as they belonged to 1983-84 batch, and as their appointment were in accordance with the directions by the Courts. It cannot be thus said that the very appointments were improper."

A reading of the judgment rendered by the learned Acting Chairman would give sufficient indication that though there were conflicting stands taken by the A.P.P.S.C and the Government with regard to the existence of carry forward vacancies, the learned Acting Chairman was carried away by the fact that in pursuance of the directions given by the Tribunal, Respondent Nos.4 and 5 were appointed. No clear finding is given by him as to the existence of carry forward or fall out vacancies. His judgment is ambivalent in that regard.

The learned Member (Judicial) to whom the matter was referred as there was difference of opinion between the Acting Chairman and the Member (Administrative), totally sailed with the Acting Chairman in his approach with regard to existence of vacancies. He also did not give any finding as to the existence of vacancies either carry forward or fall out. Ultimately he observes:

> "Hon'ble Sri A.Venkat Reddy, Acting Chairman has given an elaborate judgment consisting of 64 pages, whereas Hon'ble Sri Ch.Venkatapathi Raju, Vice Chairman wrote a brief judgment of 12 pages mainly holding that there were no carry forward vacancies and that giving seniority to the unofficial respondents is not proper, but in the light of the discussion referred to above, I disagree with the views and findings given by Hon'ble Sri Ch.Venkatapathi Raju, Vice Chairman and fully agree with the view that has been rendered by Hon'ble Sri A.Venkat Reddy, Acting Chairman, by holding that there are no merits in the OAs., and they are liable to be dismissed."

It is not the case of the Government that to honour the judgments of the Tribunal, supernumerary posts were created and Respondent Nos.4 and 5 were accommodated therein. Thus, the whole issue hovers round the question whether Respondent Nos.4 and 5 were appointed as against the carry forward vacancies/fall out vacancies. This issue is not probed into by the Tribunal. The learned Member (Administrative) also gave findings as to the existence of those vacancies based on the silences in the counter of the Government. The learned Acting Chairman was carried away by the statement of the Government, though he comes to the conclusion that conflicting statements were made by the Government and the

APPSC. The learned Member (Judicial) simply toed the line of the Acting Chairman.

In ***THE STATE OF PUNJAB*** v. ***JAGDIP SINGH***[5], the Apex Court held that when there are no vacancies in which the confirmation could take place, the order, confirming the respondents in that case, as permanent Tahasildars, is wholly void.

The Apex Court in ***ASHWANI KUMAR AND OTHERS v. STATE OF BIHAR AND OTHERS***[6], where candidates were appointed in unauthorized manner and against non-existing vacancies and their appointments were confirmed and regularized, held it a nullity.

> *"So far as the question of confirmation of these employees whose entry itself was illegal and void, is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility. It would amount to decorating a still-born baby. Under these circumstances there was no occasion to regularise them or to give them valid confirmation. The so-called exercise of*

confirming these employees, therefore, remained a nullity.....”

These judgments were distinguished by the learned Acting Chairman:

Relating to the facts in *ASHWANI KUMAR’s* case (6 supra), he observes,

> *“...It was a case where budgetary expenditure for recruitment of 2250 employees on the sanctioned posts was a planned expenditure but under the Scheme, 6000 employees as against 2250 of sanctioned posts were appointed by the then Director of Health Department Government of Bihar. In those circumstances, the Apex court held that confirmation or regularization of such appointees is null and hence, such appointees cannot get protection against future termination of service.”*

As regards the applicability of the ratio in both JAGDIP SINGH’s case (5 supra) and ASHWANI KUMAR’s case (6 supra), the learned Acting Chairman says,

> *“Herein the Government did not appoint the Party Respondents 4 to 6 on its own accord. A mandate was given by this Tribunal to appoint Party Respondent No.4 and 5. Party Respondent No.6 was appointed as per the ratio held in A.V.Bogeswarudu’s case. If such appointments were not made the official respondents could have been hauled up for contempt. In those circumstances, the Party Respondent Nos.4 to 6 were appointed, as they belonged to 1983-84 batch, and as their appointments were in*

accordance with the directions by the Courts. It cannot thus be said that the very appointments were improper. If that is so, the ratio held by the Apex Court in (1) State of Punjab (2) Aswini Kumar and (3) Gujarat Deputy Executive Engineers has no application to the facts of this case on hand....”

The question in this case is whether Respondent Nos.4 and 5 can be given seniority over the petitioners they having been appointed far subsequent to the appointment of the petitioners. The petitioners are not parties to the proceedings in which the directions for appointment of Respondent Nos.4 and 5 were given by the Tribunal. Now petitioners are not challenging their appointments as such, they are concerned about the seniority only. If the carry forward vacancies or fall out vacancies were not existing by the date of appointment of Respondent Nos.4 and 5, it is not known why the Government had not carried the matter to the High Court. It had faithfully implemented the orders of the Tribunal without demur. Yet, in the counter filed before the Tribunal, they did not specify whether there were vacancies, fall out or carry forward, in which Respondent Nos.4 and 5 were accommodated. Thus, the whole issue becomes tainted. The learned Acting Chairman and the learned Member (Judicial) skipped over the issue saying that the Government is bound to implement the orders of the Tribunal. Therefore, in these circumstances, we are of the opinion that the Tribunal shall be directed to give a clear finding as to

whether Respondent Nos.4 and 5 were appointed in carry forward vacancies/fall out vacancies by probing into the matter and consider the effect of it on the seniority of Respondent Nos.4 and 5 over the writ petitioners. Therefore, the matter is liable to be remitted to the Tribunal with a direction to give its finding on the above aspect and dispose of the O.A. anew.

Turning to the issue relating to Respondent Nos.7 to 9, the learned Member (Administrative) took the view that there are no vacancies in respect of them also. The relevant portion of the judgment runs as under:

> *"In the additional counter filed by the Government it is stated that there were 97 vacancies of Deputy Collectors out of which 27 vacancies were reserved for SCs and 11 vacancies for STs. Out of 27 vacancies reserved for SCs, 6 candidates who were eligible for inclusion in the regular panel of Deputy Collectors in the year 1989-90 were included and the remaining 21 vacancies meant for SCs and remaining vacancies of STs were filled up by other categories and Section Officers of Secretariat. Thus, there were no vacancies available left unfilled in the panel year 1989-90. According to Rule 22(h) if in any recruitment, qualified candidates belong to SC, ST or BC, as the case may be, or women are not available for appointment to all or any of the vacancies reserved for them even after conducting limited recruitment as*

specified in sub-rule (g), such vacancies or vacancy may be allotted to the Open Competition after obtaining the permission from the Government and may, thereafter be filled by a candidate or candidates selected on the basis of open competition. In case of appointment by promotion, the question of limited recruitment does not arise. Therefore, if qualified SC and ST candidates are not available in any panel, those posts can be filled up by the Government by persons belonging to other categories. When once the vacancies meant for SC/ST candidates have been filled up by the Government by persons belonging to other categories in accordance with the above rule, there would not be any vacancies available relating to the panel year 1989-90. When there are no vacancies available in the panel of 1980-90 the question of including the unofficial respondents 7 to 9 in that panel after relaxation of eligibility rules does not arise. According to Rule 6 of the State and Subordinate Rules, the panel should have relation to the vacancies that would be available in the panel year. The size of the panel can not be elastic in nature to include additional persons after giving relaxation of rules without reference to vacancy position. The respondents are not entitled for being included in 1989-90 panel where carry forward or regular vacancies meant for SC/ST are not available. Therefore, the inclusion of Respondents 7 to 9 in Deputy Collectors panel for the year 1989-90 can not be sustained..."

On the other hand, the learned Acting

Chairman with regard to the same question held:

> *"... Thus it has come to light that the unofficial respondents 7 to 9 in O.A.7497/98 were included in the panel of Dy.Collectors for the year 1989-90 in the backlog vacancies reserved for SC/ST as concurred by the A.P.P.S.C. and as per their eligibility and not in violation of any rules..."*

The learned Member (Judicial) simply glided over this point. In fact, he did not touch it, yet he gave stamp of concurrence to the judgment of the Acting Chairman. As stated earlier during the course of this judgment, it is imperative to know whether these persons were appointed against clear vacancies available for the panel year 1989-90. Thus, the appointments of Respondent Nos.7 to 9 also fall in line with that of Respondent Nos.4 and 5. As we thought it fit to remand the matter in respect of Respondent Nos.4 and 5, the same course has to be adopted in respect of Respondent Nos.7 to 9 also. Thus, the matter must go back to the Tribunal with a direction to consider the question whether Respondent Nos.4, 5 and 7 to 9 were appointed in either fall out/carry forward vacancies and dispose of the O.A. afresh in the light of the findings thereon. So far as Respondent No.6 is concerned, the writ petitions are liable to b dismissed.

In the result, both the writ petitions are dismissed in respect of 6th respondent. In the special circumstances of the case, each party is directed to

bear its own costs.

Insofar as Respondent Nos.4, 5 and 7 to 9 are concerned, the judgment of the Tribunal is set aside and the matter is remitted to the Tribunal for fresh disposal according to law, in the light of the observations made above.

J.CHELAMESWAR, J.

M.VENKATESWARA REDDY, J.

Date: 07.02.2007.

GS/LRKM

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[1] 1989 Supp (1) S.C.C. 393
[2] 1997 (1) SLR 323
[3] AIR 1998 S.C. 1841
[4] 2001 (6) ALD 294 (DB)
[5] AIR 1964 SC 521
[6] (1997) 2 SCC 1